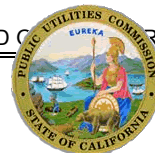


PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 14-07-002:

This is the proposed decision of Administrative Law Judge Kao. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 13, 2018, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ KAO** (Mailed 8/13/2018)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002

**DECISION DENYING PETITION FOR MODIFICATION OF
DECISION 14-05-033 REGARDING DESIGNATION OF SMALL NET ENERGY
METERING-ELIGIBLE FACILITIES PAIRED WITH ENERGY STORAGE****Summary**

This decision denies a petition by ABC Solar Incorporated to modify Decision (D.) 14-05-033. ABC Solar Incorporated's petition requests the Commission to modify the size criteria by which D.14-05-033 imposes a size limit and metering requirements on net energy metering-eligible facilities paired with energy storage. The purpose of these requirements is to limit net energy metering credits to net energy metering-eligible generation.

1. Background

In Decision (D.) 14-05-033 the Commission clarified existing policy that customers who receive electric service on a net energy metering (NEM) tariff may pair their NEM-eligible generation facilities (GFs) with qualifying storage devices; D.14-05-033 refers to such devices as NEM-paired storage, or NEM-PS, devices. D.14-05-033 distinguishes 'small' GFs from 'large' GFs and applies

differing requirements for each classification, for the purpose of limiting NEM bill credits to NEM-eligible generation, that is, energy generated by a NEM-eligible facility as opposed to non-renewable or only partially renewable energy. D.14-05-033 defines small GFs as those with NEM-PS devices of 10 kilowatts (kW) or less (alternating current (AC)) maximum discharge capacity; large GFs are those with NEM-PS devices that exceed 10 kW (AC) maximum discharge capacity. For small GFs with a NEM-PS device, D.14-05-033 requires that NEM credits accrued in any interval must be the lesser of the actual export by the GF to the utility, and the estimated presumed generation profile of the NEM generator based on an established estimation methodology for the NEM generator; no additional metering equipment is required to measure the actual storage or renewable output. For large GFs with a NEM-PS device, D.14-05-033 limits the output power of the NEM-PS device to 150 percent of the GF's capacity, and requires metering equipment similar to what is required for customers who take service on a NEM Multiple Tariff (NEM-MT). Specifically, the customer-generator must: (1) install a non-export relay on the storage device(s); (2) install an interval meter for the NEM-eligible generation, meter the load, and meter total energy flows at the point of common coupling; or (3) install an interval meter directly to the NEM-eligible generator(s).

On October 23, 2017, ABC Solar Incorporated (ABC Solar) filed and served a petition for modification of D.14-05-033 (Petition) requesting (1) to reverse Southern California Edison Company's (SCE) denial of permission to operate (PTO) for a NEM-eligible GF with a 10.8 kW NEM-PS device and, relatedly, to establish a Solar Triage Unit that would oversee the utilities' interconnection

processes;¹ and (2) to “change to 30 kW any reference to size restrictions for residential Solar PV with Advanced Battery Systems.”² The Petition explains the purpose for its requests “is to identify actions by [Southern California Edison Company] as being either illegal or contrary to Federal, State Laws, Rules and Regulations.”³

With respect to the first request, the Petition explains SCE caused harm to ABC Solar, a solar installation company, by promoting solar photovoltaic (PV) with advanced battery systems up to 30 kW in size through the Self-Generation Incentive Program (SGIP), and subsequently (beginning in August 2017) denying permission to one of ABC Solar’s clients to operate a NEM-eligible GF paired with a 10.8 kW NEM-PS device. The Petition asserts SCE improperly used D.14-05-033 as grounds to deny permission to operate, citing other language in D.14-05-033 and email communications from SCE’s assigned engineer as grounds to request an exemption from the metering requirements for large GFs with NEM-PS devices. With respect to the second request, the Petition cites Public Utilities Code Section 2827(b)(4) and the United States Supreme Court’s opinion in *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218 (1994) (*MCI v. ATT*) to assert D.14-05-033’s requirements, for large GFs with NEM-PS devices, constitute an unlawful contravention of Civil Code Section 714, referred to as the “Solar Rights Act.”

¹ *Petition of ABC Solar Incorporated for Modification of D.14-05-033 Request to Modify All Residential Solar Energy Systems to 30 KW Before Restrictions or Required Advanced Metering to Comply With Solar Rights Act and Other Laws* (Petition), filed October 23, 2017, at 12 and 55.

² Petition at 11.

³ Petition at 9.

On November 22, 2017, SCE and San Diego Gas & Electric Company (SDG&E) each filed and served a response to the Petition. Both responses assert the Petition, or the portion thereof alleging wrongdoing by SCE, is more appropriately considered a complaint against SCE. As a complaint, SCE and SDG&E assert, the pleading should be denied since the complainant does not have standing (i.e., the complainant is not the allegedly harmed customer) and fails to state a valid claim of harm.

SCE further argues for denial of the Petition's specific request to modify D.14-05-033, to re-classify 'small' GFs as those with NEM-PS devices of 30 kW or less (instead of 10 kW or less) (AC) maximum discharge capacity, because the Petition lacks legal or factual merit for this request. In support of maintaining the existing classifications of 'small' and 'large' GFs with NEM-PS devices, SCE emphasizes the original policy rationale for the State's net energy metering policy, which is to support adoption of renewable distributed energy technologies "primarily to offset part or all of [a] customer's own electrical requirements."⁴

ABC Solar did not request leave to file, and did not file, a reply to either SCE's or SDG&E's response.

2. Issues Before the Commission

As a procedural matter, the responses to the Petition correctly note that allegations against a regulated entity for violation of a Commission rule or order are appropriately brought to the Commission as complaints rather than in a

⁴ Public Utilities Code Section 2827.

petition for modification.⁵ Also, the Petition asks that we both make an exception to the current rules for one specific project, and simultaneously change those same rules, which would obviate the need for the former request for relief.⁶ For both procedural and practical reasons, we find it is appropriate to consider only the latter request, i.e., whether to re-classify ‘small’ GFs as those with NEM-PS devices of 30 kW or less. ABC Solar is not precluded from separately filing a complaint for alleged violation of a Commission rule or order by any of the investor owned utilities.

3. Discussion and Analysis

In support of its request to re-classify small GFs as those with NEM-PS devices of 30 kW or less, ABC Solar makes several arguments, each of which we describe and address here. In short, we affirm D.14-05-033 as consistent with State law, and find the Petition does not provide a compelling basis, policy or otherwise, to modify D.14-05-033 as requested.

3.1. Decision 14-05-033 does not violate Civil Code Section 714 (“Solar Rights Act”)

The Petition asserts D.14-05-033 is unlawful because it violates Civil Code Section 714, referred to as the Solar Rights Act. Civil Code Section 714 states, in pertinent part:

⁵ ABC Solar acknowledges, by way of including an email communication from the Commission’s Docket Office staff in the Petition, that ABC Solar was made aware of this requirement.

⁶ According to publicly available NEM interconnection data, the specific project application for which the Petition sought a waiver/exemption from D.14-05-033, SCE-INT-NST-02490, acquired a status of “approved” on December 21, 2017. *See* NEM Interconnection Applications Data Set, available at <https://www.californiadgstats.ca.gov/downloads/>

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in Section 4150 or 6552, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

...

(d) For the purposes of this section:

(1)

(A)

(B) For photovoltaic systems that comply with state and federal law, “significantly” means an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

The Petition references Public Utilities Code Section 2827(b)(4) as “showing a max (sic) size reference for residential and others at not more than one-megawatt,”⁷ implying that one megawatt is a “reasonable restriction” as specified in the Solar Rights Act.

Public Utilities Code Section 2827(b)(4) states:

⁷ Petition at 13.

“Eligible customer-generator” means a residential customer, small commercial customer as defined in subdivision (h) of Section 331, or commercial, industrial, or agricultural customer of an electric utility, who uses a renewable electrical generation facility, or a combination of those facilities, with a total capacity of not more than one megawatt, that is located on the customer’s owned, leased, or rented premises, and is interconnected and operates in parallel with the electrical grid, and is intended primarily to offset part or all of the customer’s own electrical requirements.

Public Utilities Code Section 2827(b)(4) contains two distinct requirements with respect to system size. First, the renewable electrical generation facility must have a total capacity of one megawatt (1 MW) or less. Second, the facility must be “intended primarily to offset part or all of the customer’s own electrical requirements.” One megawatt is the maximum size limit on NEM-eligible generation facilities in all cases, but in each case the facility must also be sized no larger than the eligible customer-generator’s own electrical requirements, which is well below 1 MW for the average residential customer.⁸

The Petition also references the SGIP Handbook, stating “[i]n the SGIP Program Handbook – 2017 30 KW system size is used as the minimum size before sophisticated meter technology can be required,” suggesting the Commission should set a residential system size threshold of, at minimum, 30 kW, before requiring metering equipment for NEM-eligible facilities paired

⁸ The Commission has maintained that electric service under NEM is limited to eligible facilities that are sized to meet the utility customer’s own electric requirements. *See, e.g.,* D.16-04-028 denying complaint of David Davis against SCE. The Petition at 14, also refers to the same complainant’s subsequent appeal of the trial court’s dismissal of his claims against SCE; in that case, the appeals court upheld the trial court’s dismissal on the basis that this Commission has supervisory and regulatory jurisdiction over both utility interconnection and the NEM program.

with energy storage. The SGIP Program requires metering and monitoring for all SGIP technologies (including energy storage) 30 kW or larger. The purpose of the SGIP metering requirements, however, is distinct from the purpose for requiring metering of large NEM facilities paired with energy storage. The SGIP program provides incentives to customers to install qualified technologies. The Commission, in D.11-09-015, determined it would be reasonable to pay incentives for systems larger than 30 kW, in part, based on their actual output (incentives for smaller systems would continue to be paid entirely upfront). Thus, metering is needed in order to measure the output of those systems. Whereas, in the SGIP program, metering is required to ensure ratepayer funds help to pay for systems that generate energy as intended, for NEM-eligible GFs paired with energy storage, metering is required to ensure the paired storage device exports energy exclusively from the NEM-eligible facility.

The size restriction and metering requirement adopted in D.14-05-033, for large GFs with NEM-PS devices, is not related to the Solar Rights Act or the SGIP Handbook, and is compliant with Public Utilities Code Section 2827(b)(4). The purpose of the size restriction and metering requirement for large GFs with NEM-PS devices, as clearly detailed in D.14-05-033, is to “ensure that only NEM-eligible generation receives NEM credit,”⁹ pursuant to the definition of “eligible customer-generator” in Public Utilities Code Section 2827(b)(4). Decision 14-05-033 does not impose any restrictions on solar energy systems, as defined pursuant to the Solar Rights Act;¹⁰ instead, it imposes a restriction on

⁹ D.14-05-033, at 20.

¹⁰ Civil Code Section 801.5: As used in this section, “solar energy system” means either of the following:

Footnote continued on next page

NEM-eligible GFs paired with qualified storage devices, pursuant to Public Utilities Code Section 2827(b)(4). Therefore, D.14-05-033 does not violate the Solar Rights Act.

3.1.1. Decision 14-05-033 does not constitute “Permissive Detariffing”

Related to the alleged violation of Civil Code Section 714 and Public Utilities Code Section 2827(b)(4), the Petition asserts “D.14-05-033 is Permissive Detariffing, an illegal act, as defined by *MCI v ATT*,”¹¹ with reference to *MCI TELECOMMUNICATIONS CORP. v. AMERICAN TELEPHONE & TELEGRAPH CO.* (*MCI v. ATT*). Specifically, the Petition asserts D.14-05-033’s requirements for NEM-eligible facilities paired with energy storage constitute more than a “minor” modification, as specified in *MCI v. ATT*, to the Solar Rights Act with respect to placing reasonable limitations on solar systems sized up to one megawatt.

This argument is not a relevant basis for granting the requested relief, given our earlier discussion that D.14-05-033 is not related to, and therefore does not violate, the Solar Rights Act.

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) A structural design feature of a building, including either of the following:

(A) Any design feature whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(B) Any photovoltaic device or technology that is integrated into a building, including, but not limited to, photovoltaic windows, siding, and roofing shingles or tiles.

¹¹ Petition, at 9.

3.1.2. The Petition lacks policy or factual justification for the requested modification

Although we decline to address the Petition's allegation of wrongdoing by SCE, it is important to acknowledge and clarify several of the Petition's arguments in support of the requested relief, to make clear D.14-05-033 does not conflict with Commission policy and, further, the Petition does not otherwise provide support for the requested relief.

First, the Petition refers to D.16-04-020's limit on fees associated with metering, equating this fee limit to an exemption from D.14-05-033's metering requirements for large GFs with NEM-PS devices. However, D.16-04-020's fee limit applies only to small (i.e., 10 kW or less) NEM-eligible facilities paired with energy storage. Specifically, D.16-04-020 Ordering Paragraph 4 provides:

A \$600 limit shall apply on fees associated with metering the systems described in Ordering Paragraphs 2 and 3, with an exemption for systems requiring complex metering solutions.

The systems described in Ordering Paragraphs 2 and 3 are NEM-eligible generation facilities paired with storage devices sized 10 kW or less. The system that is the subject of ABC Solar's Petition is greater than 10 kW, and therefore would not qualify for the fee limitation provided in D.16-04-020. We note separately, however, D.14-05-033 Ordering Paragraph 10 does set a \$600 limit on fees associated with metering equipment for all NEM-PS systems, except for "systems requiring complex metering solutions." It is unclear whether the system that is the subject of ABC Solar's Petition requires complex metering or, if not, it qualifies for the fee limitation provided in D.14-05-033. Regardless, this fee limit does not, as the Petition implies, exempt large GFs with NEM-PS devices from D.14-05-033's metering requirements.

Similarly, the Petition erroneously refers to “when it is technically feasible to do so” in Ordering Paragraph 8 of D.14-05-033, juxtaposed with the assigned engineer’s statement that “it is not technically feasible to do so (e.g., adhere to metering requirements)”¹² to assert ABC Solar’s client’s system merits exemption from the metering requirements. However, Ordering Paragraph 8 of D.14-05-033 concerns the option of customer-generators with small GFs to adhere to the metering requirements applicable to large GFs, when it is technically feasible to do so. ABC Solar’s client’s system is a large GF, therefore Ordering Paragraph 8 does not apply to it.

On the issue of technical infeasibility to adhere to the metering requirements for large GFs, the Petition later acknowledges ABC Solar’s client had a potential means to comply with those requirements, by means of a non-export relay solution offered by SolarEdge.¹³

The Petition’s main policy argument is an assertion that “a 10KW battery system is too small for the average SCE ratepayer to be self-sufficient in emergencies and blackouts. A 10 KW system does not meet the system size requirements for self-sufficiency of the majority of ABC SOLAR customers, who are 90% SCE ratepayers.”¹⁴ Here, it is worthwhile to make clear that D.14-05-033 does not preclude eligible customer-generators from installing NEM-paired storage devices larger than 10 kW. Rather, D.14-05-033 limits such a system’s maximum output power to 150 percent of the NEM generator’s maximum output power capacity, and requires metering equipment to ensure NEM bill

¹² Petition at 12.

¹³ Petition at 36-39.

¹⁴ Petition at 50.

credits accrue only to NEM-eligible generation so that these customer-generators may continue to receive service on a NEM tariff.

Finally, the Petition “argues AB2188 (sic) deliberately established cities are lead in solar permitting which includes paper works needed to get connected to the grid (sic).”¹⁵ Assembly Bill 2188 (Stats. 2014, Chap. 521) does, as the Petition quotes, direct cities and counties to create an expedited, streamlined permitting process for small residential rooftop solar energy systems. The utilities’ interconnection processes, however, are separate processes and not subject to local governments’ jurisdiction.

The Petition fails to provide a valid basis on which the Commission may find reason to modify D.14-05-033 as ABC Solar requests.

4. Conclusion

Good cause not shown, we find it reasonable to deny the Petition of ABC Solar to modify D.14-05-033.

5. Comments on Proposed Decision

The proposed decision was mailed to the parties in accordance with Pub. Util. Code § 311, and allowed comments in accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure. On _____, _____ filed comments. On _____, _____ filed reply comments.

¹⁵ Petition at 61.

6. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Valerie U. Kao and Mary F. McKenzie are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The metering requirements applicable to large GFs paired with NEM-PS devices, adopted in D.14-05-033, are not related to and therefore do not violate Civil Code Section 714.

2. The metering requirements applicable to large GFs paired with NEM-PS devices, adopted in D.14-05-033, do not conflict with Self-Generation Incentive Program requirements.

3. Decision 14-05-033 adopted metering requirements for large GFs paired with NEM-PS devices pursuant to the definition of “eligible customer-generator” in Public Utilities Code Section 2827(b)(4).

4. The metering requirements applicable to large GFs paired with NEM-PS devices, adopted in D.14-05-033, being unrelated to Civil Code Section 714, do not constitute “permissive detariffing” as defined in *MCI v. ATT*.

5. Large NEM-eligible facilities paired with energy storage are not eligible for metering cost relief provided in D.16-04-020.

6. Ordering Paragraph 10 of D.14-05-033 sets a \$600 limit on fees associated with metering equipment, except for “systems requiring complex metering solutions.” It is unclear whether the system that is the subject of ABC Solar’s Petition requires complex metering or, if not, it qualifies for the fee limitation provided by Ordering Paragraph 10 of D.14-05-033.

7. Ordering Paragraph 8 of D.14-05-033 does not apply to large GFs paired with NEM-PS devices.

8. Decision 14-05-033 does not preclude eligible customer-generators from installing NEM-paired storage devices larger than 10 kW.

9. The utilities' interconnection processes are separate from local governments' permitting processes and are not subject to local government regulation.

Conclusions of Law

1. The October 23, 2017 Petition for Modification of D.14-05-033 should be denied.

2. All other pending motions filed by ABC Solar should be deemed denied.

O R D E R

IT IS ORDERED that:

1. The October 23, 2017 Petition for Modification of Decision 14-05-033 is denied.

2. All other pending motions filed by ABC Solar Incorporated are deemed denied.

3. Rulemaking 14-07-002 remains open.

This order is effective today.

Dated _____, at San Francisco, California.